

**Arizona's Adult Use Legalization  
Bill Looks to Perpetuate  
Cronyism in Marijuana Business  
Licensing: Economic Liberty  
Concerns with Arizona's  
Proposition 207 for Marijuana  
Legalization**

**Cannabis Consumers Coalition,  
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## **Executive Summary:**

A July 8, 2020 poll by OH Prediction Insights shows that Arizonans back legal marijuana by a 62% supermajority<sup>1</sup>. However, the likely vehicle for accomplishing this aim, Proposition 207, which will be on the November 3, 2020 general election ballot, includes a number of provisions restricting ordinary entrepreneurs from being awarded commercial marijuana licenses at a time where “social equity” or “equal opportunity” in cannabis is beginning to receive interest.

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<sup>1</sup> July 8, 2020 OH Predictive Insights Poll  
[https://f.hubspotusercontent40.net/hubfs/7453540/200706\\_AZPOP/Arizona%20Public%20Opinion%20Poll%20\(AZPOP\)%20--%20Marijuana.pdf](https://f.hubspotusercontent40.net/hubfs/7453540/200706_AZPOP/Arizona%20Public%20Opinion%20Poll%20(AZPOP)%20--%20Marijuana.pdf)

## Restrictive Licensing Components of Prop. 207

The text of Arizona Proposition 207<sup>2</sup>, available on the Arizona Secretary of State's website, includes a number of provisions restricting the number of licenses available for commercial marijuana entrepreneurs, including:

Section 36-2854 (page 5):

1. (b): The Department may not issue more than one marijuana establishment license for every ten pharmacies...that operate within this state
- (c): ...the Department may issue a marijuana establishment license to not more than two marijuana establishments per county that contains no registered nonprofit medical marijuana dispensaries, or one marijuana establishment license per county that contains one registered nonprofit medical marijuana dispensary...
- (d): The Department shall accept applications for marijuana establishment licenses from early applicants beginning January 19, 2021 through March 9, 2021...the Department shall issue a marijuana establishment license to each qualified early applicant...
- (e): After issuing marijuana establishment licenses to qualified early applicants, the Department shall issue marijuana establishment licenses...by random selection...
- (f): ...no later than six months after the Department establishes final rules...the Department shall issue twenty-six additional marijuana establishment licenses to entities that are qualified pursuant to the social equity ownership program.
2. Licensing fees...that do not exceed five times the fees prescribed by the Department to register or renew a nonprofit medical marijuana dispensary.

Proposition 207 also defines “early applicant” as:

Section 36-2850

- 10 (a) An entity seeking to operate a marijuana establishment in a county with fewer than two registered nonprofit medical marijuana dispensaries
- (b) A nonprofit medical marijuana dispensary that is registered and in good standing with the department.

The US Census population estimate as recently as July 2019 for Arizona is 7,278,717. According to a March 2020 article in Marijuana Business Daily<sup>3</sup>, there are currently 131 registered medical marijuana dispensaries in Arizona, one-sixth (20%) of which are controlled by Harvest &

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<sup>2</sup> Arizona Secretary of State: <https://apps.arizona.vote/info/assets/18/0/BallotMeasures/I-23-2020.pdf>

<sup>3</sup> “Large cannabis operators positioned to dominate potential Arizona recreational cannabis market, shut out small businesses”, Jeff Smith, Marijuana Business Daily, March 13, 2020, <https://mjbizdaily.com/large-cannabis-operators-positioned-to-dominate-potential-arizona-recreational-cannabis-market-shut-out-small-businesses/>

Curaleaf, two of the larger multi-state operators; 7 other multi-state operators control another 10% of the market (Cresco, 4Front, iAnthus Capital, & Vireo Health are prominent). Under Proposition 207, with 131 licenses guaranteed for current medical marijuana incumbents, plus 26 licenses for “social equity” applicants, there would be 157 total licensed operators in adult use marijuana commerce.

Since Arizona’s currently existing medical marijuana law prohibits ownership disclosure, this data is generally only available through press releases or securities filings, and does not include data market share, which may be significantly greater than the average (plausible because multi-state operators have access to significantly greater capital for advertising and outreach campaigns, and focus acquisitions on operators in high traffic locations).

## **Self-Dealing Initiative Proposals & the Dangers of Governing by Initiative**

Public finance records indicate that as of July 2020, the Safe & Smart Arizona campaign backing Proposition 207 had received \$3.48 million in contributions, the lion's share of which is from Harvest Enterprises (\$1.425 million), Curaleaf (\$600,000), and Cresco Labs (\$300,000). These three entities currently control 22% of the current medical marijuana market in Arizona, and would be automatically granted further licenses for adult-use commerce should Proposition 207 pass as "early applicants".

Along with primacy in the adult-use marijuana market for current medical marijuana operators, Proposition 207 overtly creates barriers to entry for entrepreneurs in the following ways:

- application fees that may be 5 times greater than those for medical marijuana industry (medical marijuana application fee, \$5000<sup>4</sup>, so Proposition 207 implementation could lead to adult use commercial licensing fees as high as \$25,000) -- one can expect lobbyists for incumbent licensees will promote higher fees to exclude new entrants
- random selection of applicants that are not "early applicants" which will benefit entities that can fund multiple applications
- Limited number of licenses total (131 spots open for early applicants, plus 26 for "social equity" applicants) -- promotes gamesmanship for social equity applications where an applicant is offered cash or equity in exchange for ownership or management by an incumbent operator
- Allows the use of current medical marijuana program rules which include local zoning compliance (R9-17-304(c)(6)<sup>5</sup>; liquidity & capital requirements (R9-17-304(c)(9) which would start at \$150,000 per applicant

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<sup>4</sup> Keyt Law, [https://www.azmarijuanalaw.com/wp-content/uploads/2011/03/dispensary\\_faq.pdf](https://www.azmarijuanalaw.com/wp-content/uploads/2011/03/dispensary_faq.pdf)

<sup>5</sup> Arizona Administrative Code, Medical Marijuana Program  
[https://apps.azsos.gov/public\\_services/Title\\_09/9-17.pdf](https://apps.azsos.gov/public_services/Title_09/9-17.pdf)

## Monopolies Favored, Will Public Corruption Follow?

The current market for medical marijuana in Arizona is significant, with roughly 220,000 patients registered at the end of 2019 and nearly \$600 million in sales, according to the Arizona Republic<sup>6</sup>. Prices for medical marijuana business licenses run from \$5 million to \$30 million<sup>7</sup>, depending on the financial shape of the existing business. While medical marijuana businesses in Arizona are required to be nonprofit, management contracts are often held by for profit entities.

The value of the adult use commercial market for marijuana in Arizona is significantly higher; an analysis<sup>8</sup> prepared by economist Benjamin Newcomb for the state of Arizona concludes “...Arizona would have \$1.04 billion of recreational marijuana sales in 2023.” One can extrapolate that the value of these licenses would increase with the greater profit potential.

Additionally, the Newcomb analysis notes: “The proposition grants localities certain regulatory powers regarding marijuana establishments, including the prohibition of such establishments within its jurisdiction. Should localities exercise these powers, it could lower marijuana consumption and thus tax revenue obtained from it.”

The ability of localities to exert control in the licensing process has resulted in allegations of corruption and a grand jury indictment from Sept. 2019 targeting forged signatures on a petition opposing dispensary applications in Phoenix. According to the Arizona Republic<sup>9</sup>:

A grand jury has indicted Alexia Nuñez — the woman accused of forging signatures in a series of high-profile Phoenix medical-marijuana zoning cases — on 10 counts of felony forgery and one count of fraudulent schemes...

Last year, a number of prominent zoning attorneys alleged improper conduct in four medical-marijuana zoning cases before the Phoenix Board of Adjustment.

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<sup>6</sup> “Arizonans spent more than \$500M on medical marijuana in 2019 as legalization proposal attracts more donations”, Ryan Randazzo, Arizona Republic, Jan. 27, 2020, <https://www.azcentral.com/story/news/politics/arizona/2020/01/27/arizona-medical-marijuana-report-show-s-higher-spending-election-legalization-ballot-measure/4480772002/>

<sup>7</sup> “Flurry of investor interest in Arizona sparked by prospect of recreational marijuana legalization”, Jeff Smith, Marijuana Business Daily, July 20, 2020, <https://mjbizdaily.com/recreational-marijuana-prospect-spurs-investor-interest-in-arizona-market/>

<sup>8</sup> “Smart and Safe Arizona Act Fiscal Analysis”, Benjamin Newcomb, Arizona Legislature Joint Legislative Budget Committee Staff, <https://www.azleg.gov/jlbc/20nov1-23-2020fn730.pdf>

<sup>9</sup> “Woman indicted in high-profile Phoenix marijuana dispensary case”, Jessica Boehm, Arizona Republic, <https://www.azcentral.com/story/news/local/phoenix/2019/09/13/grand-jury-indicts-alexia-nunez-alleged-phoenix-marijuana-dispensary-fraud/2294775001>

The Board of Adjustment is made up of seven volunteers who hear appeals on zoning issues, including complaints about where medical marijuana dispensaries can locate. The cases involved unrelated medical-marijuana dispensaries, but the same individuals were involved: Nuñez and lobbyists Joe Villaseñor and Layla Ressler, who have long histories in Phoenix politics...

The presence of the same people in multiple cases — along with duplicated paperwork, false addresses and phone numbers, signature discrepancies and other unusual circumstances — prompted attorneys to suspect misconduct, perhaps on behalf of a competing dispensary.

Villaseñor was a top aide to former Mayor Phil Gordon until 2010. Ressler was Councilman Michael Nowakowski's chief of staff until 2016. She also served as Councilman Sal DiCiccio's fundraiser during his 2017 campaign.

Notably, once allegations were made public in this case in 2018, Phoenix Mayor Greg Stanton appointed four new members to the Phoenix Board of Adjustment without public comment<sup>10</sup>. Lobbyists connected to Nunez have also been scrutinized for their support of candidates for Phoenix City Council during the time period relevant to the forgery investigation<sup>11</sup>.

Similar allegations have been made as far back as 2011, when controversial marijuana activist Allan Sobol alleged that marijuana licensing was being functionally controlled by municipalities through zoning regulations<sup>12</sup><sup>13</sup><sup>14</sup>, a viewpoint also endorsed by attorney Richard Keyt<sup>15</sup>. Besides likely fraudulent gamesmanship and public corruption, applicants are also likely to be faced with uncertain local zoning processes that make license application or acquisition difficult<sup>16</sup>.

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<sup>10</sup> “Sketchy Skirmish: A suspicious Phoenix zoning situation may imply some foul play”, By [Nick Meyers](#), Tucson Weekly, May 31, 2018,

<https://www.tucsonweekly.com/tucson/sketchy-skirmish/Content?oid=16830770>

<sup>11</sup> “What \$658,000 Says About Four Candidates and Two Phoenix City Council Seats”, Elizabeth Whitman, Phoenix New Times, May 17, 2019,

<https://www.phoenixnewtimes.com/news/campaign-finance-phoenix-city-council-may-2019-election-11286735>

<sup>12</sup> “Alan Sobol Says “You Are Being SCAMMED!””,

<https://www.azmarijuanalaw.com/2011/04/alan-sobol-says-you-are-being-scammed/>

<sup>13</sup> “Alan Sobol’s April 17, 2011, Letter to Will Humble”,

<https://www.azmarijuanalaw.com/2011/04/alan-sobols-letter/>

<sup>14</sup> “Alan Sobol Adds the Rose Law Group to His List that Includes DHS, MPP & AzMMA”,

<https://www.azmarijuanalaw.com/2011/03/alan-sobol-rose-law-group/>

<sup>15</sup> Ibid

<sup>16</sup> “Know Your Zones: Tempe Marijuana Zoning Laws Could See Your Dispensary Aspirations Go Up In Smoke”, MacQueen & Gottlieb PLC, April 24, 2019,

<https://www.mandglawgroup.com/2019/04/24/know-your-zones-tempe-marijuana-zoning-laws-could-see-your-dispensary-aspirations-go-up-in-smoke/>

Furthermore, the Federal Bureau of Investigation (FBI) Office of Public Affairs last year noted that these licensing structures create pervasive opportunities for further graft and public corruption: “The corruption is more prevalent in western states where the (marijuana) licensing is decentralized—meaning the level of corruption can span from the highest to the lowest level of public officials.”<sup>17</sup>

While Proposition 207 advocates have managed to largely corral existing stakeholder interests to the point where there is little internal industry or grassroots opposition to the campaign, some stakeholders have expressed that Proposition 207 is too exclusive:

“(There’s) too much power in too few hands.”

-Mason Cave, president of the Arizona Cannabis Chamber of Commerce<sup>18</sup>

“We’re concerned about the monopolistic effect on the industry. We think it’s important that more of the community gets an opportunity to get involved in this burgeoning business.”

-Attorney Janet Jackim of Sacks Tierney, Phoenix<sup>19</sup>

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<sup>17</sup> “FBI, This Week: Public Corruption Threat Emerges in Marijuana Industry”, Mollie Halpern  
<https://www.fbi.gov/audio-repository/ftw-podcast-marijuana-industry-corruption-081519.mp3/view>

<sup>18</sup> “Large cannabis operators positioned to dominate potential Arizona recreational cannabis market, shut out small businesses”, Jeff Smith, Marijuana Business Daily, March 13, 2020,  
<https://mjbizdaily.com/large-cannabis-operators-positioned-to-dominate-potential-arizona-recreational-cannabis-market-shut-out-small-businesses/>

<sup>19</sup> Ibid



## **Fundamentals of Economic Liberty & the Movement for Cannabis Opportunity and Consumer Trust**

Proposition 207 is a classic example of how adult-use marijuana reform has expanded across the United States, where incumbent groups in the medical marijuana industry fund protectionist ballot initiatives to give themselves primacy in a larger market. This creates a number of issues for analysis, including a trend towards government by initiative; the creation of economic cartels; barriers to opportunity that functionally exclude poor and/or politically weak groups from access to legal cannabis market opportunities, particularly racial minorities & systemically Drug War impacted communities.

### *Risks of Government by Initiative in Context of Proposition 207*

Proposition 207 establishes a 16% tax on legal cannabis sales above any existing state or county sales tax. Furthermore, revenue is allocated within the framework of the initiative to a variety of state government entities including community colleges, police & fire, and the attorney general's office for enforcement. While this may sound prima facie reasonable, neither the tax level or the revenue allocation was vetted through a deliberative legislative process in context of Arizona's immediate and actual budgetary needs and priorities. Rather, decisions on taxation & revenue allocation were likely based on coalitions needed to pass Proposition 207 at the ballot -- decisions reflecting a political reality at a particular point in time.

Inasmuch as elected legislators represent the needs of their constituents and engage in a annual legislative budgetary allocation process in an effort to respond to needs and priorities that may change over time, utilizing initiative petition campaigns to limit the scope of how revenues may be used poses a constraint on legislatures looking to adapt to the circumstances -- in this case, the current COVID 19 pandemic response, which is creating significant budgetary stress at the state and municipal levels.

### *The Creation of Economic Cartels*

The fact that close to 30% of the market is controlled by a small number of multi-state operators, some of who have been the primary funders of the Proposition 207 campaign, and who stand to benefit as first entrants into the adult-use marijuana market, indicates the existence of a cartel, where a few large operators cooperate to dictate the structure of the market. An inherent aim of the cartel is price-fixing -- something that is achieved when the cartel can limit the number of market entrants and control geographic dispersal.

### *“Social Equity”*

The most common buzzword today in cannabis is “social equity”, referring to the ability of Drug War impacted individuals and communities, particularly racial minorities, to access opportunities in newly legal marijuana markets. Part of the argument is that individuals who have prior

convictions for marijuana offenses often have expertise in the market that they should be able to take advantage of as laws change.

Proposition 207 contains some “social equity” provisions, by allowing up to 26 licenses to social equity applicants, who may be selected at random. Yet this is not true social equity as only a handful of individuals or entities may be selected, despite decades of prohibition that have left millions of Americans with marijuana criminal records.

On a larger basis, capping licenses belies the American promise that this is the “land of opportunity”. Indeed, American constitutional history includes significant movements to restrict protectionist impulses, with the Commerce Clause prohibiting states from discriminating against interstate commerce & the 14th Amendment standing as a bulwark against unequal application of the laws & state action that infringed on the rights granted by American citizenship.

#### *Consumer Trust*

Lastly, restricting licensing to a select few limits the opportunity for businesses to compete for customers in the spirit of free market competition and develop consumer trust. The United State Federal Trade Commission has an expressed mission in creating and maintaining consumer trust and that begins with anti-trust laws to prevent monopolies. It is common knowledge that the result of monopolies are corruption of the political and regulatory processes including the lack of the development of laws impacting consumer safety and the enforcement of laws that do exist to protect consumer safety.

Cannabis consumers voted in faith for an industry that would operate with transparency and honesty. Cannabis consumers should also trust that the products they purchase are exactly what is being marketed and that it is safe. Monopolies limit purchasing power because of price gouging and a limited allocation of resources which contributes to the persistence of the black market. A free and open market would create fairer pricing and consumer trust would be earned buy those who provide the highest quality of products with the best prices.

## What Next?

Proposition 207 is almost certain to pass, and although the Arizona legislature is prohibited from amending a voter-passed initiative, there are some pathways that may result in expansion of opportunities for those interested in these markets.

First, federal courts are beginning to extend dormant Commerce Clause powers as a bulwark against protectionist facets of state licensing regimes. In *Wellness Connection v. City of Portland*<sup>20</sup> (Maine), US District Judge Nancy Torreson enjoined Portland from discriminating against non-resident applicants, and acknowledged that such discrimination in a process where licenses were restricted would cause an irreparable harm, as the market for adult-use marijuana was opening for the first time (as opposed to entry into a mature market, where a potential harm might be much less).

Federal legalization or decriminalization of marijuana may offer additional factors for extending Commerce Clause litigation against other protectionist elements of Arizona's licensing regime. Additionally, at least one of the major legislative efforts, the MORE Act<sup>21</sup>, which is scheduled for a vote in the US House of Representatives, would penalize states that don't offer substantial equity access to licensing, although it's not immediately clear how Arizona's limitations would be computed under that framework. It's also possible that just creating a legal framework for interstate marijuana commerce would immediately have the significant effect of allowing significant market players who have interest in expansion of marijuana market access into the picture, like the National Association of Convenience Stores<sup>22</sup>. Such a situation may be favorable to entrepreneurs, and particularly minorities, who are often owners of convenience & liquor stores, or gas stations that currently already sell hemp derived products.

A third pathway might be the convergence between marijuana and hemp (which are cannabis plants solely differentiated by the concentration of THC at harvest). The Kentucky Hemp Farmers Association, along with several other state hemp trade associations and national group Vote Hemp, is pushing for an increase in the federally legal THC level in hemp, from the current

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<sup>20</sup> "Federal Court Signals Municipalities Cannot Give Preference to Residents for Marijuana Licenses", Dykema Gossett PLLC,

<https://www.lexology.com/library/detail.aspx?g=5cd019a6-db92-4f6e-8f4d-244f8013a329>

<sup>21</sup> Cannabis Industry Awaits U.S. House Vote on the MORE Act, August 3, 2020, Melissa Schiller <https://www.cannabisbusinesstimes.com/article/cannabis-industry-awaits-us-house-vote-more-act/>

<sup>22</sup> Convenience Stores Want to Radically Change the Cannabis Industry, Jun 10, 2019, Debra Borchardt, Real Money, <https://realmoney.thestreet.com/investing/stocks/convenience-stores-could-radically-change-the-cannabis-industry-14985749>

0.3% to 1% or higher. If this were to occur, and hemp subsumes the definition of marijuana, cannabis commerce would be broadly available under federal and state hemp programs.